



# **The North Carolina Certificate Of Need Process**

A need to keep it  
A need to reform it

**The fundamental premise of the CON law is that increasing health care costs may be controlled by governmental restrictions on the unnecessary duplication of medical facilities. To accomplish its purpose, the CON law provides that “no person shall offer or develop a new institutional health service without first obtaining a certificate of need.**



## From the National Conference of State Legislatures...

- A study conducted by the “big-three” automakers claims lower health care costs in CON states than in non-CON states
- AHPA (The American Health Planning Association) also asserts that CONs have a valuable impact on the quality of care.
- When facilities and equipment are monitored, hospitals and other treatment centers can acknowledge what sort of services are in demand and how effectively patients are being taken care of.



## **From the National Conference of State Legislatures...**

- Additionally, according to supporters, the programs distribute care to areas that could be ignored by new medical centers.
- CON programs are a resource for policymakers. CON regulations are described as a reliable way to implement basic planning policies and practices, and aid in distributing health care to all demographic areas.
- The CON process can call attention to areas in need because planners can track and evaluate the requests of hospitals, doctors and citizens and see which areas are underserved or need to be improved and developed.

## Managed Competition

- Good for independent health systems like CaroMont
- Helps protect access to the most needed services in the community served by the hospital or health system
- Helps prevent overbuilding of health services that have to be funded by high utilization



## Managed Competition

- On 9/9/2011, The U.S. House of Representatives Committee, Ways and Means Subcommittee on Health held a hearing to examine stepped-up consolidation in the wake of health reform legislation.
- Subcommittee on Health Chairman Wally Herger (R-CA) and Ranking Member Pete Stark (D-CA) both expressed significant concern over harmful effects resulting from health industry consolidation. Chairman Herger cited a Rand Corporation study published in the September 2011 edition of Health Affairs as evidence that provider consolidation limits beneficiary choice, compromises patient care and drives up prices.

## Managed Competition

- With increased consolidation on the horizon, the DOJ and FTC are expected to continue to closely scrutinize, and potentially seek to block, health care industry mergers and acquisitions that, in the agencies' view, would create market dominance and restrain competition
- On the provider side, the FTC's primary concern is that market power may drive up prices paid by health plans and their insured population (in the form of higher premiums and co-pays and reduced access)
- CON (with reforms) can be an instrument to help keep the healthcare ecosystem in balance.

## Is the CON process still Relevant in NC?

**Gaston poverty rate rising- From the Gaston Gazette**

October 30, 2011 2:24 AM

Wade Allen

While Gaston's poverty rate has risen 36.7 percent from 2007-10, neighboring Cleveland County has seen a drop in their poverty rate.

**Gaston's poverty rate rose from 15 percent in 2007 to 20.5 percent in 2010, which is above both the national and state averages.**

Cleveland's poverty rate decreased 6.3 percent during those three years, from 22.1 percent of the population living at or below the poverty level to 20.7 percent. These numbers are also above the national and state averages.

The North Carolina Justice Center compiled the figures using data from an American Community Survey in 2010.

Lincoln County saw a 75.6 percent rise in people living at or below the poverty level, jumping from 9 percent in 2007 to 15.3 percent in 2010.

**North Carolina's unemployment rate statewide rose from 14.3 percent in 2007 to 17.5 in 2010.**

**The poverty rate in the United States increased in 2010 to 15.1 percent, the highest level since 1993, according to CNN Money. America's poverty rate in 2009 was 14.3 percent.**

Donny Hicks, director of the Gaston Economic Development Commission, called Gaston's poverty increase a "pretty large change" and directly attributable to the economy and loss of employment.

**With issues like these, it seems more relevant now than ever...there's no competition for uninsured or underinsured patients**



## NCHA Position on CON

The fabric of most North Carolina communities is woven around its hospital. CON has benefited community hospitals. In turn, through CON, hospitals benefit their communities and the State.

North Carolina's CON law **protects communities' investments in their hospitals**. Most hospitals in North Carolina are either non-profit or public hospitals. The state invests directly in public hospitals and indirectly in non-profit hospitals by offering state guaranteed subsidized debt. By law, hospitals must provide certain services to any patient. By mission, hospitals frequently provide virtually any service to any patient. Financially viable hospitals are the State's assurance of economical, readily available health care for all populations. The Certificate of Need laws are aimed at **restraining health care costs, promoting access and allowing for coordinated planning of new services and construction.**



## **CON Repeal Will Not Reduce Costs or Improve Quality of Care**

- Concentration of health care services leads to quality care.
- Hospitals cannot maintain state-of-the-art facilities and highly skilled staff if carve-out companies take away paying services.
- Health care costs are increasing because the cost of prescription drugs, blood, labor, technology and the number of uninsured are growing – not a lack of hospital competition.

\*from the NCHA's Position Paper on Certificate of Need



## CON Repeal Will Not Reduce Costs or Improve Quality of Care

- If CON is repealed, hospital costs will rise as fixed overhead is spread across fewer patients. CON repeal would add competitors and redistribute paying patients but would not reduce costs, reduce prices or improve quality. Further, since many carve-out companies control their own referrals, they have no incentive to reduce prices to gain volume.
- Deterioration of the healthcare infrastructure in North Carolina won't happen fully next month or even next year. But it would happen if CON is repealed and patients would be the ones to suffer.

\*from the NCHA's Position Paper on Certificate of Need





## The Process...

- **Publication of *State Medical Facilities Plan***

At the beginning of the calendar year DHSR publishes the State Medical Facilities Plan (SMFP) which contains the maximum number of health facility beds, by category, which can be approved by the CON section. There are currently 8 CON project categories. The SMFP also contains the batching cycle dates for the year. Batching cycles allow the CON section to review all applications for the same service at once.

- **Letter of Intent (LOI)**

An LOI must be submitted to the CON Section no later than the date the application is due. However, most applicants submit their LOI as soon as possible. If an LOI is submitted before the beginning of a review period, the CON Section forwards a letter to the applicant indicating whether or not CON review is required. If review is required the letter will indicate the review dates and application forms necessary.

- **Application Submission**

Applications and accompanying fees must be received by 5:30 p.m. on the 15th day of the month preceding the beginning of the review period (as published in the SMFP). An application may not be amended after it is submitted. However, the Con Section may request clarifying information from the applicant. If an application is deemed incomplete, the CON Section will notify the applicant within 5 days.

- **Public Comment Period**

During the first 30 days of the review period, any person may file written comments, letters of support concerning the applications under review.

### **Public Hearing**

Although a hearing is not required for all reviews, it is required for competitive reviews, any proposal over \$5,000,000 and can also be requested by any affected parties. The public hearing will take place no more than 20 days before the conclusion of the review period.

### **CON Section Application Review**

The CON section has from 90 to 150 days to review an application. All written comments and public hearings are taken into consideration during the decision making process.

### **Decision Appeals**

If an interested party wants to appeal the CON Section's decision, they must file a petition for a contested case hearing with the Office of Administrative Hearings within 30 days of the date of the decision. The administrative law judge will make his recommended decision to the director of DHSR within 270 days of the petition's filing. The director will then make the final agency decision.

### **Appealing Final Decision**

If a party wishes to appeal the final agency decision, they must do so through the North Carolina Court of Appeals.

### **Monitoring**

After a CON has been issued the CON Section will monitor the development of the project through required progress report. The CON Section may withdraw a CON if the holder does not develop and operate services consistent with their CON application.



## **So, What's Good for the CON Process?**

- Consider who actually constitutes an “interested” party in the comment and appeals process
- Consider having shorter, more defined timeline for the statutory “right of appeal” process
- Consider what drives the true cost of obtaining a CON and focus on reforming those components

## What's Good for Gaston County?

- A process that maintains the health services needed for those with and without the ability to “pay their way”
- A process that allows the same chance for independent health systems to provide a CON-based service as it does an academic medical center or hospital authority
- A process that allows for the citizens of a county to have a voice in choosing regulated services in their community

## What's Good for Gaston County?

- Legislation like H 812 Hospital Authority Territorial Jurisdiction.
- Legislation like H 743 Equal Treatment Under SMFP.
- These legislative actions help promote equity in managed competition and helps promote equitable access to care for communities